



# Criminal Division

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**REMARKS\* TO**  
**LEADERSHIP ATLANTA**  
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\*Note: Mr. Wray frequently speaks from notes and may depart from the speech as prepared.

Thank you for that kind introduction and for the invitation to be here. It's great to be home and a real honor to address this distinguished group. I welcome the chance to discuss with you the Justice Department's efforts in the investigation and prosecution of terrorists, and our use of the tools in the USA PATRIOT Act on the front lines of the war on terrorism.

The lack of truly thoughtful and informed debate about the Patriot Act makes it pretty difficult for most Americans to figure out exactly what the Act does and how they feel about it. I've been with the Justice Department since before, during, and since we suffered the September 11 attacks and Congress passed the Patriot Act, and I've met plenty of people who've told me that they think the Act is a terribly worrisome thing. I always respond by saying, "I'm sorry to hear that," and that I think it's a good law. Then I ask the person to tell me exactly what about the Patriot Act bothers him or her.

At this point, I generally get two types of answer. People in the first group say, "all" or "most" of it. So I usually ask them, "well, just pick *one* thing about the Act that bothers you, and maybe I can put your mind at ease." And they can't identify one. These are often bright, educated people who've taken a strong stand on an important topic without taking the time to figure out what the Patriot Act really says.

The second group of folks can and does name a specific beef with the Patriot Act. The problem is, almost all of the things they name are things not in the Act at all, or reflect a really fundamental distortion of something that is. I'll give you some examples: Guantanamo - not in the Patriot Act. Enemy combatants: Jose Padilla, Ali al-Marri, Yasser Hamdi - not in the Patriot Act. Material witness warrants - not in the Patriot Act. Passenger profiling and no-fly lists - not in the Patriot Act.

It's not just those of us in the Justice Department who keep encountering angry but totally misinformed commentary on the Patriot Act. I testified at a hearing on the Act a little while ago, where Senator Dianne Feinstein, a Democrat from California, said that her office had received over 21,000 letters opposing the Act, but that more than half of those cited provisions that were never enacted or even sent to Congress for consideration. And the rest, she said, largely concerned security measures that apply to items mailed to the U.S. from abroad - again, not provisions of the Patriot Act. She also said that she'd *never* had a single abuse of the Patriot Act reported to her, and that when her staff e-mailed the ACLU and asked them for instances of actual abuses, they e-mailed back and said they had none.

One of the provisions of the Patriot Act instructs the Justice Department's Inspector General to designate someone to receive complaints about abuses of the Patriot Act, publicize his responsibilities and contact information, and submit to

Congress two reports every year on any complaints he's received. According to his last report, issued just last week – almost three years after Congress passed the Patriot Act – he still hasn't found a single abuse under the Act. This is hardly a guy known for pulling his punches; his *mission* is to ferret out any misconduct within our Department.

So what exactly *is* in the Patriot Act? For starters, a lot of ordinary, smart, and unsurprising things. This is why I'm struck by how many people broadly declare that they're against it. Portions of it condemn racial discrimination, like backlash crimes against Sikh-Americans and Arab-Americans. Other parts of the Act provide mechanisms for faster and larger relief to the children and spouses left behind by law-enforcement officers killed responding to terrorism. Part of it provides more money to first responders to terrorism. Do folks really want that stuff repealed? I sure hope not.

In short, the reason people talk about repealing the Patriot Act is because there just hasn't been enough calm, informed, and rational discussion about it. I hope that this evening, we can step back from both sides, take a deep breath, and actually discuss what we're doing in response to terrorism in this country. It reflects very well on Leadership Atlanta that you'd seek this opportunity to become better informed on this subject.

### *I. FISA*

I've been asked to explain and discuss several of the Patriot Act's provisions. Before I discuss the most important provisions of all, I should talk a bit about the FISA Court, or the Foreign Intelligence Surveillance Court. This is what folks are referring to when they sometimes refer to a “secret” court, where closed hearings include judges and government lawyers but no defendants or defense counsel.

The FISA Court was set up a long time ago, back in 1978, when Congress established two different systems for criminal prosecution and foreign intelligence matters. The first system is the adversarial one that you know all about-prosecutors, defense lawyers, judges, and juries, all talking about whether or not a defendant committed a crime.

The second system includes the FISA Court. The judges on this court regulate the government's collection of foreign intelligence information in the course of conducting counterintelligence. What does this mean in plain English? It means that the FISA Court doesn't even get involved in run-of-the-mill criminal cases – for example, drugs, organized crime, and fraud. Instead, these judges get involved when the government has reason to believe that a person's acting on behalf of a foreign power

like another country or an international terrorist organization, and we're trying to thwart espionage, sabotage, or terrorism. If a "significant purpose" of an investigation is to collect foreign intelligence information, then Justice Department attorneys can apply to the FISA Court for authorization to conduct surveillance or searches, or to get certain business records – it's *not* a court in which we bring charges against someone.

Once you understand what kinds of matters the FISA Court hears, it makes perfect sense that its hearings aren't open to the public. If intelligence agents have reason to believe that a person's in cahoots with a foreign government or an international terrorist organization and is engaging in espionage or terrorist activity, none of us wants investigators saying so in open court and tipping off the very people we're trying to stop. That's just common sense. Nor is it all that unusual; we do business under court seal in the criminal prosecution system you all know, too. For example, indictments are filed under seal when a defendant hasn't been located or arrested. Why? Because if he gets wind of the fact that he's wanted by authorities, he's much more likely to flee and escape justice.

Having talked about the two systems of foreign intelligence and criminal prosecution, let me say a little about the single most important thing that the Patriot Act actually did: It knocked down the metaphorical "wall" that impeded the sharing of information between the intelligence and law enforcement communities. To use a football analogy, before the Patriot Act, the laws had been interpreted to require the government's team to form two separate huddles that couldn't readily talk to each other; as a result, the collective effort against terrorism was weaker than it should've been. As the recent 9/11 Commission Report confirms, before September 11, the difficulty of coordinating throughout our own government made it a lot tougher for us to "connect the dots" and prevent and disrupt terrorist attacks.

My friend Pat Fitzgerald, now the U.S. Attorney in Chicago, said that when he was leading the prosecution and investigation of Al Qaeda in the mid-90s in New York, he found he could talk to a variety of people. He could talk to police officers. He could talk to civilian witnesses. He could go overseas, as he did, and talk to foreign police officers and foreign intelligence agents. He could even talk to Al Qaeda members. He had sworn Al Qaeda members who had come in from the dark side to America, been relocated here and protected, and he debriefed them on a regular basis. He could talk to all those people to learn about Al Qaeda and to try to build a case to stop Al Qaeda. But there was one group he couldn't talk to, and that was the FBI agents right upstairs who were conducting the parallel *intelligence* investigation of Al Qaeda.

That wall, that divide between two groups who are both devoting their lives to protecting the American people from Al Qaeda, was more than frustrating; it was

downright dangerous. A world in which prosecutors could talk to Al Qaeda but not to some of their own colleagues in the FBI was a world in which Americans weren't as safe as they needed to be. That's by far and away the single most important advance in the Patriot Act, and yet I find that the Act's critics don't like to talk about that part. But it changed our world for the better.

For example, information sharing led directly to the indictment of Sami Al-Arian, a former professor at the University of South Florida, and other alleged members of the Palestinian Islamic Jihad (PIJ) in Tampa, Florida. PIJ is believed responsible for over 100 murders, including those of two young Americans in Israel: 20-year-old Alisa Flatow, who was killed in a bus bombing, and 16-year-old Shoshana Ben-Yishai, who was shot on the way home from school.

Information sharing, along with close cooperation with Russian law enforcement, also contributed to the capture and indictment in New Jersey of Hemant Lakhani, an arms dealer charged with attempting to sell shoulder-fired anti-aircraft missiles to terrorists for use against American targets. Information from previous intelligence investigations helped in the criminal investigation of Ilyas Ali in San Diego for conspiring to exchange tons of hashish for anti-aircraft missiles, for sale to Al Qaeda. He and one of his cohorts pleaded guilty, and another's awaiting trial. I could go on and on.

If these examples don't convince you, then listen to people like Stewart Baker, the former general counsel to the National Security Agency during the last administration. In 1994, he argued, like many others, that the wall was necessary to protect against potential privacy abuses by government officials. But in last December's Slate magazine, even he laments his earlier position, saying that "[w]e missed our best chance to save the lives of 3,000 Americans because we spent more effort and imagination guarding against . . . theoretical privacy abuses than against terrorism." He calls the creation and maintenance of the wall "little short of feckless," and concludes that, "on September 11, 2001, [it] probably cost us 3,000 American lives."

Thankfully, Congress recognized the danger of keeping the wall up and brought it down with the Patriot Act. Since then, our ability to share vital intelligence and law enforcement information has disrupted terrorist operations in their early stages, has led to more arrests and prosecutions for terrorism offenses, and has ultimately saved American lives.

The need for a well-coordinated campaign against terror has never been greater. More than three years after September 11, it's natural for that day to begin to resemble some hazy, horrible nightmare. But it was no bad dream. Every morning, those of us in

the law enforcement, intelligence, and military communities confront the threat on a very real basis when we meet to review the daily intelligence. We know that there are many who would gladly take the place of the September 11 hijackers, who are just as intent on killing more innocent people. These guys are sophisticated, cunning, disciplined, and utterly committed to mass murder. Figures like Usama bin Laden urge their followers to kill Americans as their holy duty.

Terrorists still have the desire and the capability to strike us at home with little or no warning. For example, just a couple of weeks ago, terrorists set off a bomb outside the Australian Embassy in Indonesia, killing 9 and injuring 180. Just a week earlier, Chechen terrorists stormed a school near Moscow, took 1,200 hostages, and ultimately killed 335 of them, mostly children. In April, British authorities arrested nine terrorist suspects and seized half a ton of ammonium nitrate fertilizer, a bomb component, in a storage garage near London's Heathrow Airport. And according to intelligence estimates, 15 to 20,000 terrorists have been trained in Al Qaeda-affiliated camps in Afghanistan since bin Laden established them in 1996. We only have to remember how much harm 19 of those men caused on 9/11 to understand the threat that any one of these thousands poses. This is especially true when we know that Al Qaeda remains absolutely intent on obtaining and using chemical, biological, radiological, and nuclear weapons of mass destruction.

Over the past few months, senior Administration officials have reported an increased risk for a terrorist attack. We know that our homeland remains a top Al Qaeda target, and credible reporting now indicates that Al Qaeda is moving forward with plans to carry out a large-scale attack in the U.S. in an effort to disrupt our democratic process. Right now, we lack precise knowledge about when, where, and how they plan to attack, but we're actively working to gain that knowledge.

Keep in mind, too, that terrorists have gained footholds everywhere, even in our own backyards. The threat of terrorism isn't limited to downtown Manhattan or Washington, D.C. We've pursued terrorism cases in places like Lackawanna, New York; Portland, Oregon; Minneapolis, Minnesota; and Tampa, Florida. And those are just a few of the cases I can talk about.

Despite these challenges, we're making significant progress and scoring key victories in the war on terror. Since September 11, we've charged 361 defendants as a result of terrorism investigations. To date, 192 have already been convicted. We've broken up terrorist cells in Buffalo, Charlotte, Portland, and northern Virginia, and the Patriot Act has been critical to our efforts.

## *II. Roving Wiretaps*

In addition to allowing for information sharing, the Patriot Act also brought the law up to date with current technology, so we no longer have to fight a digital-age battle with antique weapons. Terrorists, like drug dealers and other organized criminals, use modern technology to conduct and conceal their activities: They're trained to thwart surveillance by rapidly changing cell phones. The Patriot Act just leveled the playing field by allowing terrorism investigators to adapt to these methods.

For example, so-called “roving” wiretaps, when approved by a court, allow investigators to conduct electronic surveillance on a particular suspect, rather than a particular telephone. This lets us track and listen to his conversations without regard to what instrument he's using, because we've established that he swaps phones. This technique has been used for over a decade to investigate ordinary crimes, including drug offenses and racketeering; thanks to the Patriot Act, terrorism investigators now have the same valuable tool.

Before Congress gave us the authority to use roving wiretaps, we conducted terrorism investigations where the period of darkness—six, seven hours—that you needed to get a new order for each phone was simply unacceptable. It was dangerous in drug investigations, and it was even more so in terrorism cases.

## *III. The “Library” Issue*

Moving on: I often hear complaints or fears from groups—for example, like the ACLU—about a so-called “library” provision in the Patriot Act. The suggestion is that Section 215 of the Act creates some sort of new “open season” for the government to investigate the library habits of ordinary citizens. Not true. This misinformation has apparently led a number of well-meaning librarians to warn patrons needlessly of possible government monitoring. This overreaction has only led to further public confusion and misunderstanding about what the Patriot Act actually does.

Let me say this first, as clearly as I can: There is no mention of libraries anywhere in the Patriot Act. In my experience, that fact alone surprises most people. What the Act allows is for FBI agents conducting international terrorism investigations or foreign counterintelligence investigations to go to an independent federal judge, and, based on a written showing, get a court order allowing the production of business records—perhaps from a credit-card company, a car-rental business, a hotel, or theoretically, I suppose, a library. It's got to be in the context of an international terrorism or foreign counterintelligence investigation, and the Act goes out of its way to

warn that the investigation can't be predicated on First Amendment activities alone.

Both before and after the Patriot Act was passed, it was much easier to get those records by going to an Assistant U.S. Attorney, because that AUSA could write up a subpoena for them with no judge involved, no showing of any kind, simply a stack of preprinted forms. Those grand-jury subpoenas were used, for example, in the Ted Kaczynski "Unabomber" case, where Kaczynski had referred to some obscure texts in his manuscript, and the FBI, in an effort to tie him to the manuscripts, had subpoenaed library records to see if he had checked out, as he had, those obscure texts.

This part of the Patriot Act, at least as of September 2003, had never been used. The number that we declassified was zero, and that may be because it was so much easier to get those same records through ordinary criminal process.

Now it's flattering, I suppose, to the government, that folks would think we have the resources to follow people's reading habits, but if someone is indeed reading about how to build a dirty bomb and planning to build one and a source tells us that, we're duty-bound to check that out. I don't think that even folks who have been very excited about this issue, when they take the time to think about it, really want libraries to be some sort of sanctuary for criminal behavior. Librarians don't want that; nobody wants that. Nobody wants libraries to become an island where, especially because of the presence of computers, criminals or terrorists can use those facilities without fear of law enforcement. We encountered a situation not long ago that caused great concern in that regard.

We were tracking someone in a terrorism case who, although he had a computer at home, kept going to a library. We couldn't quite figure out why he was doing that until we discovered that this library system, in a major American city, had installed software in the wake of the Patriot Act that scrubbed the hard drive after each user, and scrubbed it in a way that we couldn't reconstruct it. This person knew that and so was using the computer, sending e-mails from that facility, knowing that he could do it without us knowing about it, without fear of being caught.

Other terrorists and spies have used libraries to plan and carry out activities that threaten our national security. For example, Brian Regan, who was convicted last year of offering to sell U.S. intelligence information to Iraq and China, used a computer at a local public library to look up addresses for Iraqi and Libyan embassies overseas. Similarly, in a recent domestic terrorism criminal case, a grand jury subpoena was served on a bookseller to obtain records showing that a suspect had bought a book that showed how to build an unusual detonator that had been used in several bombings. This was important evidence identifying the suspect as the bomber.

One of the things that upsets some people, in particular about this provision, is that the court order carries with it a gag on the library, or more often the rental-car place or the credit-card company, that they can't tell that they received the request. This has caused a great deal of concern, and I suppose it's worthy of debate, but one question I ask folks is, should libraries, or credit-card companies, or rental-car places, really be the people to decide whether to tell someone that the FBI is conducting a foreign counterintelligence investigation or a foreign terrorist investigation?

Much of the confusion, I think, about the Patriot Act – including this part – grows out of a misunderstanding or complete lack of understanding of how federal criminal prosecutors and investigators work in ordinary criminal cases. I've heard expressions like, "The government is secretly accessing people's records." That's something prosecutors and investigators have done for years, thousands of times a day, through the ordinary criminal process, to get bank records, phone records, credit-card records, and use them to successfully prosecute criminals. Before the Patriot Act, our experience was that, with respect to documents, the rules were tighter for terrorist investigations than they were for even credit-card-fraud investigations – as backwards and upside-down as that sounds. The Act made it right.

#### *IV. Delayed-Notice Search Warrants*

Another important tool has been the delayed-notice search warrant. When law enforcement officers execute a search warrant, they have to tell the subject about it. This is still true of a delayed-notice search warrant-sometimes called a "sneak and peek" warrant-but it allows the government, in certain cases, to apply to a judge for permission to delay – not deny – notification of the execution of the search warrant for a reasonable period of time. Even to delay notice, the government has to show a specific good reason, such as preservation of lives, preserving the integrity of a major investigation, destruction of evidence, things of that sort. It's a tool that's been used for decades in federal and local law enforcement-hardly some controversial technique. In fact, back in 1979, the Supreme Court characterized a challenge to the constitutionality of a delayed-notice search warrant as frivolous.

An example might help show why this tool is so useful to criminal investigators and public safety. Agents from the FBI and the DEA were in the middle of a two-year-long, multi-district investigation of a large and sophisticated drug-trafficking and money-laundering organization. Investigators learned that a car loaded with a large quantity of MDMA, or ecstasy, would be entering the U.S. from Canada on its way to Jacksonville, Florida. They had a choice to make: On the one hand, they could get a search warrant and seize the drugs, but endanger the entire investigation by letting the

principal targets, and perhaps scores of their confederates, know that the authorities were onto them. On the other hand, they could simply let the drugs walk onto the streets of Jacksonville. Neither option was in the public interest.

Thanks to a delayed-notice search warrant, investigators didn't have to make that choice. Prosecutors went to a federal judge, laid out the facts that showed probable cause and the facts that justified delay, and got a court order that permitted the search and permitted the agents to make the search look like a car theft.

Agents followed the car once it crossed into the U.S. and waited for the driver to stop somewhere. When he parked the car at a restaurant and went inside, one agent used a duplicate key to enter the car and drive it away, while other agents spread broken glass around the parking space to make the subject think his car had been stolen. A search of the car revealed a hidden compartment inside the gas tank that contained 30,000 ecstasy tablets and 10 pounds of high-potency marijuana. And the drug kingpins actually thought their drugs had been stolen by a car thief, not federal agents, because the court authorized agents to delay notice of the search and seizure for sixty days.

Not long after, the team of investigators and prosecutors took that case down and locked up more than 130 others, both here in the U.S. and in Canada. We seized a lot of drugs that one day with the delayed-notice search warrant, but we seized a lot more throughout the two-year investigation, from start to finish: 407,000 tablets of ecstasy; 1,370 pounds of marijuana; \$8.7 million in U.S. currency; 46 weapons; and 35 vehicles.

That just took me three minutes to explain. The challenge that we face as the folks seeking to use these tools is finding the three minutes in American life for people to listen to stuff like that, because when they do, in my experience, their response is, "I didn't know that's what that was. Wow, I wouldn't want you to lose that tool." But finding that space to provide those details is an enormous challenge for us.

The example I just mentioned shows how valuable a delayed-notice search warrant can be in a run-of-the-mill drug case. It doesn't take much imagination to understand how important it could be in a terrorism investigation. For example, in a recent narco-terrorism case, a court issued a delayed-notice warrant to search an envelope that had been mailed to the target of an investigation. The warrant allowed officials to continue the investigation without compromising an ongoing wiretap. The search confirmed that the target was funneling money to an affiliate of the Islamic Jihad terrorist organization in the Middle East. The target of the warrant was then charged and notified of the warrant. In cases like those, the money's going to buy bombs, not drugs.

I'm glad you're also getting to hear from Congressman Barr, who led a team of aggressive and resourceful federal prosecutors when he was U.S. Attorney here in Atlanta a few years back. I wouldn't be at all surprised if his office occasionally used delayed-notice search warrants to help break some of the important cases they made back then.

### *Conclusion*

To wrap up, I'd like to encourage all of you to learn more about this topic. If you're concerned about the use of government power in the war on terror, educate yourself. Read up on it. Learn the specifics, the facts. Whether you're for or against the Patriot Act, know *why* you're for or against it. There are plenty of good reasons why the Patriot Act passed 98 to 1 in the Senate and 357 to 66 in the House. Have more discussions like the one we're having tonight.

If more and more of us do that, if we all take a deep breath and a step back, I hope that all Americans will eventually leave their minds open to the possibility that there need not be a tradeoff between liberty and security, and that we can keep the greatest and freest system in the world and still make our people safe. At the Justice Department, we're committed to using every tool the laws and the Constitution allow-no more, but certainly no less. I happen to think that's what the public expects of us – and deserves. Thanks for having me.